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**Environmental & Land  
Case 958 of 2006**

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**JAVERSON MACHARIA  
NJUGUNA  
ELIZABETH NJERI NJUGUNA ..... PLAINTIFFS**

VERS

VINCENT GICHURU GAITHO

PATRICK MAGIRI GAITHO

EVELYN WAMBUI KIARIE ..... DEFENDANTS

**DIRECTIONS**

The originating summons dated 8<sup>th</sup> September, 2006, came up for hearing before me on 6<sup>th</sup> October, 2011. Both parties made oral and relied on written submissions and the judgment was scheduled for 17<sup>th</sup> February, 2012.

However, as I set out to write the Judgment, I encountered certain difficulties presented by issues that cannot be resolved by affidavit evidence. Upon perusal of the court file (although the proceedings have not been typed), I am able to discern from an order made by **Rawal, J** (as she then was) that the originating summons be heard by oral evidence based on affidavits. This means that if parties gave oral evidence, they can be subjected to the court room processes of examination and cross examination.

For the aforesaid reasons and in the interest of justice, I am unable to determine this suit by way of submissions. I direct that the matter be fixed for hearing by way of oral evidence *de novo*. Matter be mentioned on priority basis before the presiding judge, Land and Environmental Division for directions.

**Directions given and signed this 17<sup>th</sup> day of February, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on 30<sup>th</sup> November, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceed to write and append my signature thereto in my new capacity.*